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Mark A> Litman and Associates, P.A. York Business Center 3209 w. 76th Street Suite 205 Edina, MN 55435			BEAUCHAINE, MARK J	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte RODNEY G. JOHNSON

Appeal 2009-005701
Application 10/663,436
Technology Center 3600

Decided: December 8, 2009

Before: JENNIFER D. BAHR, STEFAN STAICOVICI, and FRED A. SILVERBERG, *Administrative Patent Judges.*

BAHR, *Administrative Patent Judge.*

DECISION ON APPEAL

STATEMENT OF THE CASE

Rodney G. Johnson (Appellant) appeals under 35 U.S.C. § 134 (2002) from the Examiner's decision rejecting claims 20, 21, 25-31, and 34-36, which are the only claims pending in the application. We have jurisdiction over this appeal under 35 U.S.C. § 6 (2002). Appellant's representative presented oral argument on December 3, 2009.

The Invention

Appellant's claimed invention is directed to an automatic card shuffler.

Claim 25, reproduced below, is illustrative of the claimed subject matter.

25. An automatic card shuffler, comprising:

a card holding area;

a card randomization area;

a card transfer mechanism that moves cards from the card holding area to the card randomization area;

a card reading mechanism located between the card holding area and the card randomization area that is capable of reading rank and suit; and

a display device on the card shuffler capable of displaying rank and suit of cards.

The Rejection

The Examiner has rejected claims 20, 21, 25-31, and 34-36 under 35 U.S.C. § 103(a) as being unpatentable over Roblejo (US 5,989,122, issued

Nov. 23, 1999), Grauzer (US 6,149,154, issued Nov. 21, 2000), and Macheel (US 4,339,134, issued Jul. 13, 1982).

SUMMARY OF DECISION

We REVERSE.

OPINION

Each of Appellant's independent claims 20, 25, and 28 requires a card shuffler comprising a sensor or card reading mechanism, capable of reading rank and suit, and a display device capable of displaying rank and suit of cards. The Examiner found that Roblejo describes a card shuffler comprising a card reader 14 which reads the suit and rank of each card individually (Ans. 4), and Appellant does not dispute that finding. The Examiner conceded, however, that Roblejo fails to disclose a display that displays the suit and rank of a card read by the card reader 14 (Ans. 5). The Examiner found that Macheel teaches a card shuffler having illuminated displays 18 and 20 that display the suit and rank of a card to notify an operator of the identity of a particular card being processed by the shuffler (Ans. 5). The Examiner then concluded that it would have been obvious to one of ordinary skill in the art at the time of Appellant's invention to incorporate the suit and rank display of Macheel into the card shuffler of Roblejo for the purpose of notifying an operator of the identity of a card being processed by the shuffler (Ans. 5).

Appellant disputes the Examiner's finding that Macheel discloses a card shuffler; rather, according to Appellant, Macheel describes an electronic card game, which does not read cards and which is immaterial to

the shuffling of physical playing cards (Reply Br. 3). Thus, according to Appellant, Macheel does not make up for the deficiency of Roblejo (App. Br. 17).

Accordingly, an issue presented in this appeal is whether Appellant has demonstrated that the Examiner erred in concluding that the combined teachings of Roblejo, Grauzer, and Macheel would have prompted a person of ordinary skill in the art to provide on Roblejo's card shuffler a display capable of displaying the suit and rank of a card, as called for in each of Appellant's independent claims. In particular, does the reason for the modification articulated by the Examiner have rational underpinnings?

We find that Roblejo's microprocessor is programmed to determine the identity (suit and rank) of the card read from the information received from the card reader 14, to compare the identity of the card to a list of cards in a set, to generate a random order of cards in the set, to control the alignment of slots in the sorting wheel to receive the cards in slots in the wheel to achieve the generated random order of the cards, to generate a signal if a determination is made of an identity that does not belong to the set, and to determine whether a complete set of cards has been identified by the reader 14. Roblejo, col. 3, ll. 34-35 and 50-59. Roblejo teaches that when an incorrect set is determined, either on the basis that a card is missing or that a card not belonging to the set has been identified, "the apparatus sends a signal, either audible [or] visual, to a network administrator, by ejecting a card which does not belong to the set, or by any other means to indicate an incorrect deck." *Id.*, col. 4, ll. 11-18, col. 5, ll. 27-33. In other words, Roblejo's card shuffler generates some sort of error signal so as to indicate an incorrect deck. Roblejo does not teach a display for displaying

the suit and rank of any card read by the card reader 14 or processed by the card shuffler.

Macheel, as correctly pointed out by Appellant, is not directed to a card shuffler. Rather, Macheel is directed to an electronic card game, which is provided with displays 18 and 20 for displaying the cards attributable to the dealer's hand and the cards attributable to the player's hand. Macheel, col. 2, ll. 62-63, col. 3, ll. 12-18. Further, Macheel's electronic card game re-shuffles the deck of cards prior to the beginning of the new hand if the total number of cards distributed in previous hands has exceeded 38, and simulates the random selection of cards from the deck. *Id.*, col. 2, ll. 18-23, col. 33, ll. 7-12. We do not find, however, and the Examiner has not pointed to, any disclosure in Macheel of displaying the identity (suit and rank) of the cards during the re-shuffling.

Rejections on obviousness grounds must be supported by “some articulated reasoning with some rational underpinning” to combine the known elements in the manner required in the claim at issue. *KSR Int'l. Co. v. Teleflex Inc.*, 550 U.S. 398, 418 (2007). Rejections based on 35 U.S.C. § 103 must rest on a factual basis. In making such a rejection, the examiner has the initial duty of supplying the requisite factual basis and may not, because of doubts that the invention is patentable, resort to speculation, unfounded assumptions or hindsight reconstruction to supply deficiencies in the factual basis. *In re Warner*, 379 F.2d 1011, 1017 (CCPA 1967).

As shown by our findings above, the Examiner has not supplied a factual basis to support the conclusion that it would have been obvious to a person of ordinary skill in the art to provide a display for displaying the suit and rank of cards in Roblejo's card shuffler to notify the operator of the

identity of the card being processed. At best, Macheel establishes that displays capable of displaying the identity of a simulated playing card were known in the art at the time of Appellant's invention. The Examiner simply has provided no evidence to show that, absent the disclosure in Appellant's Specification, a person of ordinary skill in the art would have had a reason to display the identity of the card being processed in the card shuffler of Roblejo.

The Examiner does not rely on Grauzer for any teaching directed to a display capable of displaying the suit and rank of a card. Rather, the Examiner simply relies on Grauzer for teachings directed to the placement of the card reader (*see* Ans. 4).

For the above reasons, we conclude that Appellant has demonstrated that the Examiner erred in concluding that the combined teachings of Roblejo, Grauzer, and Macheel would have prompted a person of ordinary skill in the art to provide on Roblejo's card shuffler a display capable of displaying the suit and rank of a card, as called for in each of Appellant's independent claims. In particular, the reason for the modification articulated by the Examiner does not have rational underpinnings, but, rather, appears to be grounded on unfounded assumptions or hindsight reconstruction. Therefore, we do not sustain the rejection as to the independent claims 20, 25, and 28, and dependent claims 21, 26, 27, 29-31, and 34-36.

DECISION

The Examiner's decision is reversed.

REVERSED

Appeal 2009-005701
Application 10/663,436

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